

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

A COUNCIL BILL

A Council Bill to approve the
Choctaw Nation/Oklahoma
Tobacco Tax Compact of 2003

FILED

OCT 28 2003

OKLAHOMA SECRETARY
OF STATE

Whereas, the Choctaw Nation's representatives have been negotiating with representatives of the State of Oklahoma on a new Tobacco Tax Compact; and


Whereas, an agreement has been reached;

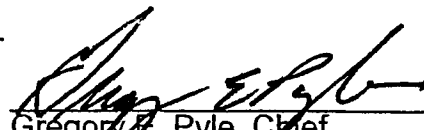
NOW THEREFORE BE IT ENACTED by the Tribal Council of the Choctaw Nation of Oklahoma that this Council Bill be cited as authority for approval of the Choctaw Nation/Oklahoma Tobacco Tax Compact of 2003, a copy of which is hereto attached as Exhibit "A" and incorporated herein.

CERTIFICATION

I, the undersigned, as Speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that twelve members answered roll call and that a quorum was present at the Regular Session of the Tribal Council at Tuskahoma, Oklahoma, on October 11, 2003. I further certify that the foregoing Council Bill CB- 07 -04 was adopted at such meeting by the affirmative vote of twelve (12) members, zero (0) negative votes and zero (0) abstaining.


Kenny Bryant, Speaker
CHOCTAW NATION TRIBAL COUNCIL


Charlotte Jackson, Secretary
CHOCTAW NATION TRIBAL COUNCIL


Gregory E. Pyle, Chief
CHOCTAW NATION OF OKLAHOMA

Date: 10/15/03

F I L E D

OCT 28 2003

OKLAHOMA SECRETARY
OF STATE

CHOCTAW NATION/OKLAHOMA

TOBACCO TAX COMPACT

2003

TOBACCO TAX COMPACT
BETWEEN THE STATE OF OKLAHOMA
AND

THE CHOCTAW NATION OF OKLAHOMA

F I L E D
OCT 28 2003
OKLAHOMA SECRETARY
OF STATE

WHEREAS, The Choctaw Nation of Oklahoma, the compacting Indian Nation (herein referred to as the "Nation") is a federally recognized Nation with sovereign powers of self-government.

WHEREAS, the State of Oklahoma (hereinafter referred to as "State") is an independent sovereign state within the United States of America possessed of full powers of state government;

WHEREAS, the Nation and its membership are in possession of various tracts of land in its jurisdiction within the state, known and commonly referred to as "Indian Country";

WHEREAS, the State by and through the United States Supreme Court decision in Oklahoma Tax Commission vs. Citizen Band Potawatomi Indian Tribe of Oklahoma contends it is authorized to collect state taxes on cigarettes and tobacco products sold by tribal businesses to non-tribal members;

WHEREAS, federal Indian law recognizes that tribal jurisdiction is extant in Indian Country regarding the rights of Indian Nations to pass their own laws and be governed by them, including the right to sell cigarette and tobacco products to tribal members free from state taxation; and

WHEREAS, the State recognizes the financial, cultural, educational and economic contributions of the Nation to the State and its citizens and the Nation in turn recognizes the need to develop and maintain good tribal/state relations in this period of cooperation.

NOW, THEREFORE, The Choctaw Nation of Oklahoma (Nation) by and through its Chief, Gregory E. Pyle, and the State of Oklahoma by and through its Governor, Brad Henry, do hereby enter into this compact for the mutual benefit of the Nation and the State, to-wit:

1. Notwithstanding the subsequent enactment of any applicable law, all sales of cigarettes and tobacco products in Indian Country as defined by federal law shall be governed by the provisions of this compact, when said sales are made (a) by businesses owned by the Nation, (b) by licensees who are members of the Nation, or

(c) by businesses licensed by the Nation in which the majority interest is owned by the Nation or members of the Nation. The entities or groups described in a, b, and c shall be collectively referred to as Tribal Retailers.

2. The Nation agrees to require as a condition to licensing that all Nation's retail licensees who are members of the Nation, all the Nation's retail licensees which are businesses in which the majority interest is owned by the Nation or by members of the Nation, and wholesale licensees will comply with the provisions of this compact.

3. The Nation or its licensees shall make a payment to the State in lieu of state tobacco excise and sales taxes in the amount of twenty-five percent (25%) of all applicable excise taxes, which taxes were effective as of January 1, 2003, and, except as hereinafter provided, one hundred percent (100%) of all applicable excise tax increases as may be enacted by the State after January 1, 2004, on all cigarettes and tobacco products purchased by the Nation or Nation's licensees for resale in Indian Country of the Nation, without reference to the membership or non-membership status of the purchasing public. Provided, however, the Nation shall not pay increases in said taxes imposed on cigarettes and other tobacco products after January 1, 2004, which are purchased and sold at any of its retail businesses located within Twenty (20) miles of the state line between Texas and Oklahoma until such time as the state of Texas increases its taxes on tobacco products. When such increase becomes effective, the Nation shall pay to State on all sales made within Twenty (20) miles of said state's line the lesser of increases enacted by Oklahoma after January 1, 2004 or a sum equal to the increase in tobacco taxes by the state of Texas which are applicable to all non-tribal sales in said state. Similarly, after Oklahoma increases its current tax, the Nation shall pay to the State on all sales made within twenty (20) miles of the state line between Arkansas and Oklahoma the lesser of the increases enacted by Oklahoma after January 1, 2004, or a sum equal to any increase in tobacco taxes by Arkansas effective after January 1, 2003, which are applicable to all non-tribal sales in said State. Furthermore, the Nation shall not pay increases in said taxes imposed on cigarettes and other tobacco products after January 1, 2004, which are purchased and sold at any of its retail businesses located within ten (10) miles of a retail facility selling tobacco products that was in operation on January 1, 2003, owned or licensed by a tribe party to a tobacco tax compact with the State under which such tribe is only obligated to pay the State 25% of all applicable excise and sales taxes until such time as such tobacco tax compact terminates or is cancelled by mutual agreement of the parties.

4. From the payments to the State by the Nation or its licensees of tobacco tax increases after January 1, 2004, as provided in the preceding paragraph, fifty percent (50%) of all such payments shall be held in an interest bearing trust account for the Nation by the State. These trust funds shall be and remain property of the Nation, and shall be remitted quarterly by the State to the Nation.

5. Any store, not a Tribal Retailer owned or licensed, operating with the Nation's jurisdiction or Indian Country and engaging in the sale of cigarettes and tobacco products shall not be subject to the provisions of this compact.

6. All payments in lieu of State taxes shall be collected by all wholesalers, distributors, jobbers, or warehousemen selling cigarettes and tobacco products to the Nation and to the Nation's licensees for resale in Indian Country and shall be collected at the time of the wholesale transaction and included in the wholesale purchase price for remission to the State.

7. The Nation agrees to purchase cigarettes and tobacco products only from wholesalers, distributors, jobbers, sub-jobbers or warehousemen who agree to allow verification of sales to state officials on a timely basis. The Nation shall at all times maintain and provide the State with a current list of all its tribally owned and licensed stores and the wholesalers, distributors, jobbers, sub-jobbers, or retailers. It shall be the responsibility of the wholesalers, jobbers, sub-jobbers, or warehousemen to forward copies of all invoices of wholesale tobacco product sales to the Nation's licensed wholesalers, jobbers, sub-jobbers and retail outlets to the State and to the Nation.

8. All cigarettes sold shall bear Tribal and State stamps or a single stamp approved by both parties, verifying that all applicable tribal taxes and payments in lieu of state taxes have been paid to the wholesaler at the time of purchase. In the event that both tribal and state stamps are used, each party shall bear its respective cost of affixing its stamp. In the event a single stamp is used, the state shall bear all costs relative thereto, unless there is mutual agreement otherwise. At the option of the Nation, or someone on behalf of the State, the wholesaler, distributors, jobbers or warehousemen shall affix the required stamp or stamps.

9. Both parties agree that unstamped cigarettes are contraband, and that each party has the right to seize contraband. The Nation may seize all contraband located within its Indian Country. The State may seize all contraband located within the lawfully recognized boundaries of the State of Oklahoma, excluding Indian Country of the Nation.

10. The State shall exempt all sales of cigarettes and tobacco products to and by the Nation and its licensees from sales and excise taxes in consideration of the agreement by the Nation to make the aforementioned payment in lieu of state taxes. The State further agrees that it will not generally waive or forgive any otherwise applicable tobacco taxes on sales by retailers not a party to this or a similar compact except in settlement of a doubtful or disputed claim as allowed by law and shall make a good faith effort, to the extent permitted by federal and state law, to enforce state tobacco tax laws against third party retailers not complying therewith.

11. Any dispute arising in the interpretation or performance of this Compact, which is not resolved by good faith negotiations within thirty (30) days, shall be subject to binding arbitration. Arbitration may be invoked by either party following the negotiation period should the dispute remain unresolved. Arbitration shall be the exclusive means of resolving such disputes subject only to review by the United States District Court having jurisdiction and venue. When arbitration is invoked, a panel of arbitrators consisting of three (3) members shall be appointed. One shall be appointed by the nation and one by the State. A third shall be appointed by the other two members. The expenses of arbitration shall be born equally by the parties. The arbitrators shall adopt their own procedural rules regarding the arbitration process in conformity with the rules of the American Arbitration Association.

12. This agreement shall terminate on June 30, 2013. At the end of said term, this compact shall continue in full force and effect for consecutive terms of one (1) year, unless either party hereto gives to the other written notice that the compact shall terminate at the end of the present term, provided that such notice is given at least six (6) months prior to said termination. Nothing in this Compact shall prevent the parties by mutual agreement from establishing an earlier termination date or otherwise modifying this agreement.

13. By entering into this compact, the Nation does not concede that the laws of the State of Oklahoma, including its tax laws, apply to the Nation or its members regarding activities and conduct on its Indian Country.

14. Each party shall hold the other, including its agents and licensees, harmless from any past taxes or payments in lieu of taxes on cigarettes and tobacco products.


15. By entering into this Compact, the Nation further agrees that all funds received from the trust funds set forth in paragraph 4 above, except administrative expenses, shall be devoted to health, welfare, educational and other governmental purposes of the Nation. It is further agreed that no such funds shall be used by the Nation, directly or indirectly, to purchase tobacco or shall be remitted or rebated to tobacco retailers.

16. Should the State enter into a tobacco tax compact with another Indian tribe with terms more favorable to the other Indian tribe than those in this compact, such more favorable terms may, at the option of the Nation, automatically be incorporated herein.

17. This compact shall be effective when fully executed by all parties, and there is attached hereto the original, or a properly certified copy of the properly

prepared and approved resolution of the legislative body of the Nation authorizing the Nation to enter into and execute this agreement.

It is agreed this the 8TH day of OCTOBER, 2003.

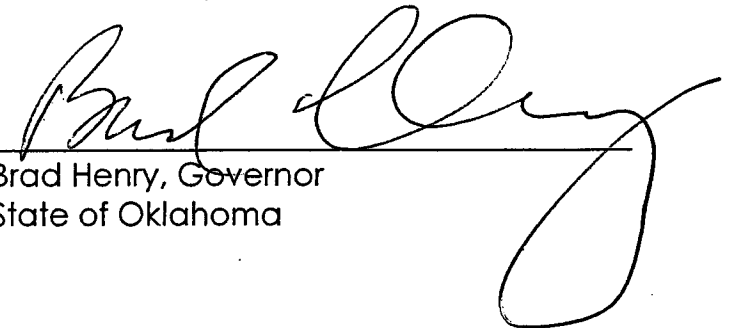


Gregory E. Pyle, Chief of the Choctaw
Nation of Oklahoma

ATTEST:



Secretary of State



Brad Henry, Governor
State of Oklahoma